

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ELSTON T. CASTILLO, et al.,

Plaintiffs,

v.

ICE OFFICER MS. WILLIAMS, et al.,

Defendants.

CASE NO. C15-5676 BHS

ORDER GRANTING
PLAINTIFF'S MOTION TO
PROCEED IN FORMA
PAUPERIS, DISMISSING
COMPLAINT, AND GRANTING
LEAVE TO FILE AMENDED
COMPLAINT

This matter comes before the Court on Plaintiff Elston Castillo's ("Castillo") motion to proceed *in forma pauperis* (Dkt. 1) and proposed complaint (Dkt. 1-1).

On September 18, 2015, Castillo filed the instant motion and proposed complaint asserting a cause of action under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. 1346(b). Castillo alleges that the Department of Homeland Security and United States Immigrations and Customs Enforcement improperly took \$19,500 from him by wrongfully revoking an immigration bond posted on his behalf. Dkt. 1-1. According to

1 the complaint, the dispute revolves around whether Castillo's address of record was
2 properly changed in the Government's files. *Id.*

3 The Court may permit indigent litigants to proceed *in forma pauperis* upon
4 completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). Although a
5 plaintiff may qualify to proceed *in forma pauperis*, a federal court may dismiss *sua*
6 *sponte* pursuant to Fed. R. Civ. P. 12(b)(6) when it is clear that the plaintiff has not stated
7 a claim upon which relief may be granted. *See Omar v. Sea Land Serv., Inc.*, 813 F.2d
8 986, 991 (9th Cir. 1987) ("A trial court may dismiss a claim *sua sponte* under Fed. R.
9 Civ. P. 12(b)(6) Such a dismissal may be made without notice where the claimant
10 cannot possibly win relief."). In the event the court finds that dismissal is warranted, the
11 court should grant the plaintiff leave to amend unless amendment would be futile.
12 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

13 In this case, the Court finds that Castillo qualifies to proceed *in forma pauperis* but
14 fails to state a claim for relief. Based upon Castillo's fee waiver request, Castillo does
15 not have the means to pay the filing fee for this action. Therefore, the Court grants
16 Castillo's motion to proceed *in forma pauperis*.

17 Castillo's complaint, however, fails to state a claim for relief. The FTCA
18 comprises a limited waiver of the federal government's sovereign immunity with respect
19 to private causes of action sounding in tort. *See Fothergill v. United States*, 566 F.3d 248
20 (1st Cir. 2009). "A tort is conduct that amounts to a legal wrong and that causes harm for
21 which courts will impose civil liability. Conduct that counts only as breach of contract
22 may lead to legal liability under the rules of contract law, but breach of contract is not

1 usually considered to be a tortious wrong.” *Dan B. Dobbs, Paul T. Hayden and Ellen M.*
2 *Bublick*, *The Law of Torts* § 1 (2d ed.). Castillo’s complaint alleges a breach of the bond
3 contract and does not allege facts that would give rise to a tort cause of action against the
4 Government. Therefore, the Court *sua sponte* dismisses Castillo’s complaint. Although
5 the Court finds that dismissal is warranted, the Court is unable to find that any
6 amendment would be futile.

7 With regard to contract actions against the government, the Tucker Act provides a
8 waiver of sovereign immunity and for jurisdiction in the Court of Federal Claims for
9 certain claims brought against the United States:

10 The United States Court of Federal Claims shall have jurisdiction to
11 render judgment upon any claim against the United States founded either
12 upon the Constitution, or any Act of Congress or any regulation of an
13 executive department, or upon any express or implied contract with the
14 United States, or for liquidated or unliquidated damages in cases not
15 sounding in tort.

16 28 U.S.C. § 1491(a)(1). The Little Tucker Act provides a waiver of sovereign immunity
17 and for concurrent district court jurisdiction over:

18 [a]ny ... civil action or claim against the United States, not exceeding
19 \$10,000 in amount, founded either upon the Constitution, or any Act of
20 Congress, or any regulation of an executive department, or upon any
21 express or implied contract with the United States, or for liquidated or
22 unliquidated damages in cases not sounding in tort.

28 U.S.C. § 1346(a)(2). “Read together, these statutes provide for jurisdiction solely in
the Court of Federal Claims for Tucker Act claims seeking more than \$10,000 in
damages, and concurrent district court jurisdiction over claims seeking \$10,000 or less.”

1 *McGuire v. United States*, 550 F.3d 903, 910-11 (9th Cir. 2008) (citing *United States v.*
2 *Hohri*, 482 U.S. 64, 67 n.1 (1987)).

3 Based on the allegations in the complaint, it appears that Castillo may state a cause
4 of action under the Tucker Act for breach of contract against the government. Thus, the
5 Court grants Castillo leave to amend his complaint. In order to maintain his action in this
6 Court, Castillo must limit his damages to \$10,000. If Castillo pursues a cause of action
7 for the \$19,500, he should file a complaint in the Court of Federal Claims and voluntarily
8 dismiss this action. Regardless, Castillo must either file an amended complaint or inform
9 the Court of a voluntary dismissal no later than October 30, 2015. Failure to do so or
10 show cause why he could not do so by that deadline will result in **DISMISSAL without**
11 **prejudice** by the Clerk and without further consideration by the Court.

12 **IT IS SO ORDERED.**

13 Dated this 29th day of September, 2015.

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16 BENJAMIN H. SETTLE
17 United States District Judge
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